

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

03 JUL 14 PM 12:52

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF	)	Docket No. CWA-07-2003-0245
	)	
The City of St. Charles, Missouri	)	
Respondent	)	FINDINGS OF VIOLATION
	)	AND ORDER FOR COMPLIANCE
Proceedings under Section 309(a)(3)	)	
of the Clean Water Act,	)	
33 U.S.C. § 1319(a)(3)	)	
_____	)	

**I. Preliminary Statement**

1. These FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA Region VII.
2. The Respondent is the City of St. Charles, Missouri ("Respondent").
3. The State of Missouri has not been authorized to administer the Sludge Management Program, however, by an agreement between EPA Region VII and the State of Missouri, the Missouri Department of Natural Resources (MDNR) has undertaken certain administrative functions of the program, including the establishment of sewage sludge disposal requirements pursuant to 40 CFR Parts 501 and 503 in state issued NPDES permits. EPA remains responsible for enforcement of the requirements of the Federal Sludge Management Program until such time as the State would be authorized to administer the program in its entirety.

**II. Findings of Violation**

**Statutory and Regulatory Framework**

4. Section 405(d)(1) of the Act, 33 U.S.C. §1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

5. Pursuant to Section 405(d)(1) of the Act, 33 U.S.C. § 1345(d)(1), EPA promulgated the regulations governing the Standards for the Use or Disposal of Sewage Sludge, which are set forth at 40 C.F.R. Part 503, on February 19, 1993. Said Standards became effective March 22, 1993. These regulations include record keeping and reporting requirements, pollutant limits and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.
6. Pursuant to 40 C.F.R. § 503.13(a)(1), bulk sewage sludge or sewage sludge sold or given away in a bag shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of § 503.13. The ceiling concentrations include a limit for nickel at 420 mg/kg dry weight.

#### Factual Background

7. Respondent is a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), and owns and operates a "treatment works treating domestic sewage" as defined by 40 C.F.R. § 122.2. Respondent is therefore subject to the provisions of the Act.
8. Respondent generates "sewage sludge" at its Missouri River plant, NPDES number MO-0058351 that is used for "land application" on "agricultural land," as these terms are defined by 40 C.F.R. §§ 503.9(w), 503.11(h) and 503.11(a), respectively.
9. During reporting year 2002, Respondent applied 605 dry tons of sewage sludge treated in its Missouri River plant to agricultural land.
10. Pursuant to 40 C.F.R. § 503.18(a), Respondent submitted an annual sludge report for the 2002 reporting period (2002 report) to EPA.
11. According to the 2002 report Respondent tested its sludge for metals concentrations on February 5, 2002. The sample analysis detected a concentration of nickel in the sample of 471 mg/kg.
12. According to the 2002 report, the Respondent applied bulk sewage sludge to agricultural land on 6 days in February 2002.

#### Violation

13. The facts stated in paragraphs 7 through 12 above are herein incorporated.
14. Respondent applied bulk sewage sludge to agricultural land on up to 6 separate occasions in February 2002. Respondent's failure to demonstrate compliance with the ceiling concentrations for nickel for sludge applied to land, as described above, is a violation of Section 405 of the Act and 40 C.F.R. § 503.13(a).

### **III. Order for Compliance**

Based on the foregoing FINDINGS OF VIOLATION and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

15. Immediately upon receipt of this Order, Respondent shall comply with the requirements of 40 C.F.R. Part 503, including, but not limited to meeting all ceiling concentrations for land application of sewage sludge in accordance with Table 1 of 40 C.F.R. § 503.13.
16. Within thirty (30) days of completion of the requirements of paragraph 15 of this Order for Compliance, Respondent shall provide to EPA and MDNR a written statement, signed by a principal executive officer or ranking elected official, certifying that the City of St. Charles has achieved compliance with all the applicable requirements of 40 C.F.R. Part 503.
17. Within thirty (30) days of receipt of this Order, Respondent shall develop and submit to EPA for approval, with a copy to MDNR, a sludge sampling plan that will ensure that application of sludge to land is in compliance with 40 C.F.R. Part 503. The sampling plan shall be subject to review and approval in accordance with Paragraph 18 below.
18. Within thirty (30) days of receipt of this Order, Respondent shall develop and submit to EPA for approval, with a copy to MDNR, a plan that includes alternative disposal options to be employed when sewage sludge does meet the requirements of 40 C.F.R. Part 503. The plan shall be subject to review and approval in accordance with Paragraph 18 below.
19. All documents required to be submitted to EPA Region VII for review and approval by this Order for Compliance shall be submitted to EPA and MDNR as provided in Paragraph 20 below. Upon receipt of comments from EPA, Respondent shall:
  - (a) if directed to modify the document by EPA's response, resubmit the document with such modifications to EPA Region VII within fifteen (15) days of receipt of EPA's comments (or such other time as directed in writing by EPA); and
  - (b) when directed by EPA's response, execute the provisions of the document as directed by this Order.

### **IV. General Provisions**

20. The provisions of this Order are severable. If any provision of this Order is determined to be unenforceable, the remaining provisions shall remain in full force and effect.

21. All correspondence, documents and reports required to be submitted pursuant to this Order to EPA or MDNR shall be sent to the following:

Cynthia Sans  
NPDES and Facilities Management Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

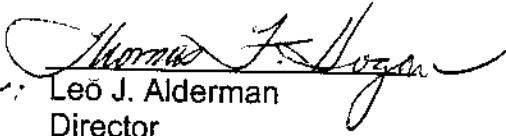
Mr. Kevin Mohammadi, Chief  
Enforcement Section  
Water Pollution Control Program  
Missouri Dept. of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

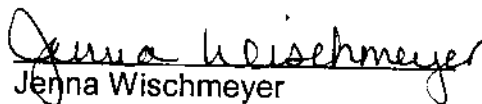
This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

This Order shall become effective upon the date of receipt by Respondent.

Issued this 14<sup>th</sup> day of July, 2003.

  
for: Leo J. Alderman  
Director  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

  
Jenna Wischmeyer  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Certificate of Service

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Administrative Order for Compliance to:

The Honorable Patricia York  
Mayor of the City of St. Charles  
200 North 2<sup>nd</sup> Street, Suite 400  
St. Charles, Missouri 63301

Mr. Kevin Mohammadi, Chief  
Enforcement Section  
Water Pollution Control Program  
Missouri Dept. of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

7/14/3  
Date

Debby White